

## REMARKS

The Official Action of February 9, 2009 and the art cited therein have been carefully considered. The amendments and remarks herein are responsive thereto. Applicants acknowledge and would like to thank the Examiner for allowance of claim 39.

Claims 40-42 are objected to for being dependent upon a rejected base claim. Pursuant to the remarks made below regarding establishment of common ownership under 103(c) claims 40-42 are dependent upon an allowable claim.

**I. Rejections under 35 USC § 103(a)**

The Examiner maintained the rejection under 35 USC 103(a) for claims 37, 38, and 43 over US 6245759 B1, and US 20020041880 A1 stating that the common ownership statement provided by Applicants was not in the form of a declaration.

However, pursuant to a discussion on February 18, 2009 with the Examiner it was agreed that establishment of common ownership pursuant to section 103(c) did not require submission of a declaration. Thus, the statement Applicants made in their previous responses, that is "at the time the application of the invention was made it was owned by Merck," is sufficient to establish common ownership. In light of this the Examiner is respectfully requested to withdraw the 35 USC 103(a) rejections as Applicants have complied with the procedure for establishing common ownership.

**II. Conclusion**

In light of the remarks herein the Examiner is respectfully requested to withdraw the objections and rejections, and contact the undersigned if this would expedite the allowance.

Respectfully submitted,

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Date: February 18 2009